

ASSEMBLY BILL

No. 1562

Introduced by Assembly Member Robert Pacheco

February 26, 1999

An act to amend Sections 676, 781, and 827.5 of, to amend and renumber Section 827.1 of, and to repeal and add Section 827.6 of, the Welfare and Institutions Code, relating to juvenile offenders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1562, as introduced, Robert Pacheco. Juvenile offenders: records: confidentiality.

Under existing law, juvenile court hearings are closed to the public; however, existing law requires that the public be admitted, on the same basis as criminal trials, to juvenile court hearings alleging the commission of specified felonies. Existing law also provides that the name of a minor found to have committed one of those specified felonies shall not be confidential unless the court, for good cause, so orders.

This bill would require the juvenile court to daily post a list of juvenile court hearings open to the public. The bill would also define "good cause" for purposes of keeping confidential the name of a minor found to have committed one of those specified felonies and would require any finding of good cause to be made in writing on the record.

Various provisions of existing law provide for the confidentiality of juvenile court records.

This bill would authorize a law enforcement agency to disclose specified information regarding minors, 14 years of

age or older, found to have committed certain serious felonies, with specified exceptions; would revise the authorization for a law enforcement agency to disclose information regarding a minor alleged to have committed a serious felony; and would authorize a law enforcement agency to release the name, description, and alleged offense of a minor against whom an arrest warrant is outstanding for a violent offense, as specified.

Existing law authorizes the juvenile court to prohibit the disclosure of any file or record if it appears that harm to the minor or other parties outweighs the benefit of public knowledge.

This bill would allow the juvenile court to prohibit disclosure for the benefit of the minor only if it makes a written finding that the prohibition is for the minor's protection.

Existing law provides for the sealing and eventual destruction of juvenile court records, as specified.

This bill would prohibit the sealing or destruction of records of any person who committed a serious felony, as specified, when he or she was 14 years of age or older.

This bill would establish a state-mandated local program by imposing new duties on local officials.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 676 of the Welfare and
2 Institutions Code is amended to read:



676. (a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge or referee may nevertheless admit those persons he or she deems to have a direct and legitimate interest in the particular case or the work of the court. However, except as provided in subdivision (b), members of the public shall be admitted, on the same basis as they may be admitted to trials in a court of criminal jurisdiction, to hearings concerning petitions filed pursuant to Section 602 alleging that a minor is a person described in Section 602 by reason of the violation of any one of the following offenses:

(1) Murder.

(2) Arson of an inhabited building.

(3) Robbery while armed with a dangerous or deadly weapon.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(7) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(8) Kidnapping for ransom.

(9) Kidnapping in violation of subdivision (b) of Section 209 of the Penal Code.

(10) Kidnapping with bodily harm.

(11) Assault with intent to murder or attempted murder.

(12) Assault with a firearm or destructive device.

(13) Assault by any means of force likely to produce great bodily injury.

(14) Discharge of a firearm into an inhabited or occupied building.

1 (15) Any offense described in Section 1203.09 of the
2 Penal Code.

3 (16) Any offense described in Section 12022.5 or
4 12022.53 of the Penal Code.

5 (17) Any felony offense in which a minor personally
6 used a weapon listed in subdivision (a) of Section 12020
7 of the Penal Code.

8 (18) Burglary of an inhabited dwelling house or trailer
9 coach, as defined in Section 635 of the Vehicle Code, or
10 the inhabited portion of any other building, if the minor
11 previously has been adjudged a ward of the court by
12 reason of the commission of any offense listed in this
13 section, including an offense listed in this paragraph.

14 (19) Any felony offense described in Section 136.1 or
15 137 of the Penal Code.

16 (20) Any offense as specified in Sections 11351, 11351.5,
17 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and
18 Safety Code.

19 (21) Criminal street gang activity which constitutes a
20 felony pursuant to Section 186.22 of the Penal Code.

21 (22) Manslaughter as specified in Section 192 of the
22 Penal Code.

23 (23) Driveby shooting or discharge of a weapon from
24 or at a motor vehicle as specified in Sections 246, 247, and
25 12034 of the Penal Code.

26 (24) Any crime committed with an assault weapon, as
27 defined in Section 12276 of the Penal Code, including
28 possession of an assault weapon as specified in subdivision
29 (b) of Section 12280 of the Penal Code.

30 (25) Carjacking, while armed with a dangerous or
31 deadly weapon.

32 (26) Kidnapping, in violation of Section 209.5 of the
33 Penal Code.

34 (27) Torture, as described in Sections 206 and 206.1 of
35 the Penal Code.

36 (28) Aggravated mayhem, in violation of Section 205
37 of the Penal Code.

38 (b) Where the petition filed alleges that the minor is
39 a person described in Section 602 by reason of the
40 commission of rape with force or violence or great bodily

1 harm; sodomy by force, violence, duress, menace, or
2 threat of great bodily harm; oral copulation by force,
3 violence, duress, menace, or threat of great bodily harm;
4 or any offense specified in Section 289 of the Penal Code,
5 members of the public shall not be admitted to the
6 hearing in either of the following instances:

7 (1) Upon a motion for a closed hearing by the district
8 attorney, who shall make the motion if so requested by
9 the victim.

10 (2) During the victim's testimony, if, at the time of the
11 offense the victim was under 16 years of age.

12 (c) The name of a minor found to have committed one
13 of the offenses listed in subdivision (a) shall not be
14 confidential, unless the court, for good cause, so orders. *As*
15 *used in this subdivision, "good cause" shall be limited to*
16 *protecting the personal safety of the minor; a victim, or*
17 *a member of the public. The court shall make a written*
18 *finding, on the record, explaining why good cause exists*
19 *to make the name of the minor confidential.*

20 (d) Notwithstanding Sections 827 and 828 and subject
21 to subdivisions (e) and (f), when a petition is sustained
22 for any offense listed in subdivision (a), the charging
23 petition, the minutes of the proceeding, and the orders of
24 adjudication and disposition of the court that are
25 contained in the court file shall be available for public
26 inspection. Nothing in this subdivision shall be construed
27 to authorize public access to any other documents in the
28 court file.

29 (e) The probation officer or any party may petition the
30 juvenile court to prohibit disclosure to the public of any
31 file or record. The juvenile court shall prohibit the
32 disclosure if it appears that the harm to the minor,
33 victims, witnesses, or public from the public disclosure
34 outweighs the benefit of public knowledge. *However, the*
35 *court shall not prohibit disclosure for the benefit of the*
36 *minor unless the court makes a written finding that the*
37 *reason for the prohibition is to protect the safety of the*
38 *minor.*

1 (f) Nothing in this section shall be applied to limit the
2 disclosure of information as otherwise provided for by
3 law.

4 (g) *The juvenile court shall, for each day that the court*
5 *is in session, post in a conspicuous place that is accessible*
6 *to the general public a written list of hearings that are*
7 *open to the general public pursuant to this section, the*
8 *location of those hearings, and the time when the*
9 *hearings will be held.*

10 SEC. 2. Section 781 of the Welfare and Institutions
11 Code is amended to read:

12 781. (a) Where a petition has been filed with a
13 juvenile court to commence proceedings to adjudge a
14 person a ward of the court, a person is cited to appear
15 before a probation officer or is taken before a probation
16 officer pursuant to Section 626, or a minor is taken before
17 any officer of a law enforcement agency, the person or
18 the county probation officer may petition the court for
19 sealing of the records. The petition to seal the records
20 may be filed five years or more after the jurisdiction of the
21 juvenile court has terminated over the person or, if no
22 juvenile court petition was filed, five years or more after
23 the person was cited to appear before a probation officer
24 or was taken before a probation officer pursuant to
25 Section 626 or was taken before any officer of a law
26 enforcement agency, or at any time after the person has
27 reached the age of 18 years. The petition to seal the
28 records shall include a statement disclosing whether
29 there is any pending civil litigation relating to the
30 criminal act that caused the records to be created. As used
31 in this section, "records" include records of arrest, records
32 relating to the person's case, and records in the custody
33 of the juvenile court, probation officer and any other
34 agencies, including law enforcement agencies, and public
35 officials that the petitioner alleges, in his or her petition,
36 to have custody of the records. The court shall notify the
37 district attorney of the county and the county probation
38 officer, if he or she is not the petitioner, and the district
39 attorney or probation officer or any of their deputies or
40 any other person having relevant evidence may testify at

1 the hearing on the petition. If, after a hearing, the court
2 finds that since the termination of jurisdiction or action
3 pursuant to Section 626, as the case may be, he or she has
4 not been convicted of a felony or of any misdemeanor
5 involving moral turpitude, that rehabilitation has been
6 attained to the satisfaction of the court, and that the
7 petition indicates that there is no currently pending civil
8 litigation directly relating to, or arising from, the criminal
9 act that caused the records to be created, it shall order all
10 records, papers, and exhibits in the person's case in the
11 custody of the juvenile court sealed, including the
12 juvenile court record, minute book entries, and entries on
13 dockets, and other records relating to the case in the
14 custody of the other agencies and officials as are named
15 in the order. If a ward of the juvenile court is subject to
16 the registration requirements set forth in Section 290 of
17 the Penal Code, a court, in ordering the sealing of the
18 juvenile records of the person, also shall provide in the
19 order that the person is relieved from the registration
20 requirement and for the destruction of all registration
21 information in the custody of the Department of Justice
22 and other agencies and officials. Notwithstanding any
23 other provision of law, the court shall not order the
24 person's records sealed in any case in which the person
25 has been found by the juvenile court to have committed
26 an offense listed in subdivision (b) of, ~~paragraph (2) of~~
27 ~~subdivision (d) of, or subdivision (e) of, Section 707 until~~
28 ~~at least six years have elapsed since commission of the~~
29 ~~offense listed in those provisions when he or she was 14~~
30 ~~years of age or older.~~ The court shall not order the records
31 sealed in any case unless the petition indicates that there
32 is no pending civil litigation directly relating to, or arising
33 from, the criminal act that caused the records to be
34 created. However, once the civil case is closed, the
35 records may be sealed. Once the court has ordered the
36 person's records sealed, the proceedings in the case shall
37 be deemed never to have occurred, and the person may
38 properly reply accordingly to any inquiry about the
39 events, the records of which are ordered sealed. The
40 court shall send a copy of the order to each agency and

1 official named therein, directing the agency to seal its
2 records and stating the date thereafter to destroy the
3 sealed records. Each agency and official shall seal the
4 records in its custody as directed by the order, shall advise
5 the court of its compliance, and thereupon shall seal the
6 copy of the court's order for sealing of records that it, he,
7 or she received. The person who is the subject of records
8 sealed pursuant to this section may petition the superior
9 court to permit inspection of the records by persons
10 named in the petition, and the superior court may so
11 order. Otherwise, except as provided in subdivision (b),
12 the records shall not be open to inspection.

13 (b) In any action or proceeding based upon
14 defamation, a court, upon a showing of good cause, may
15 order any records sealed under this section to be opened
16 and admitted into evidence. The records shall be
17 confidential and shall be available for inspection only by
18 the court, jury, parties, counsel for the parties, and any
19 other person who is authorized by the court to inspect
20 them. Upon the judgment in the action or proceeding
21 becoming final, the court shall order the records sealed.

22 (c) (1) Subdivision (a) does not apply to Department
23 of Motor Vehicle records of any convictions for offenses
24 under the Vehicle Code or any local ordinance relating
25 to the operation, stopping and standing, or parking of a
26 vehicle where the record of that conviction would be a
27 public record under Section 1808 of the Vehicle Code.
28 However, if a court orders a case record containing that
29 conviction to be sealed under this section, and if the
30 Department of Motor Vehicles maintains a public record
31 of the conviction, the court shall notify the Department
32 of Motor Vehicles of the sealing and the department shall
33 advise the court of its receipt of the notice.

34 Notwithstanding any other provision of law,
35 subsequent to the notification, the Department of Motor
36 Vehicles shall allow access to its record of convictions only
37 to the subject of the record and to insurers which have
38 been granted requester code numbers by the
39 department. Any insurer to which a record of conviction
40 is disclosed, when that conviction record has otherwise

1 been sealed under this section, shall be given notice of the
2 sealing when the record is disclosed to the insurer. The
3 insurer may use the information contained in the record
4 for purposes of determining eligibility for insurance and
5 insurance rates for the subject of the record, and the
6 information shall not be used for any other purpose nor
7 shall it be disclosed by an insurer to any person or party
8 not having access to the record.

9 (2) This subdivision shall not be construed as
10 preventing the sealing of any record which is maintained
11 by any agency or party other than the Department of
12 Motor Vehicles.

13 (3) This subdivision shall not be construed as affecting
14 the procedures or authority of the Department of Motor
15 Vehicles for purging department records.

16 (d) Unless for good cause the court determines that
17 the juvenile court record shall be retained, the court shall
18 order the destruction of a person's juvenile court records
19 that are sealed pursuant to this section as follows: five
20 years after the record was ordered sealed, if the person
21 who is the subject of the record was alleged or adjudged
22 to be a person described by Section 601; or when the
23 person who is the subject of the record reaches the age of
24 38 if the person was alleged or adjudged to be a person
25 described ~~by~~ *in* Section 602. Any other agency in
26 possession of sealed records may destroy its records five
27 years after the record was ordered sealed.

28 (e) This section shall not permit the sealing of a
29 person's juvenile court records for an offense where the
30 person is convicted of that offense in a criminal court
31 pursuant to ~~the provisions of~~ Section 707.1. This
32 subdivision is declaratory of existing law.

33 (f) Notwithstanding any other provision of law, the
34 records of a ~~juvenile person~~ who was ~~16~~ 14 years of age or
35 older at the time he or she committed any criminal
36 offense listed in subdivision (b) of Section 707 shall not be
37 destroyed.

38 (g) Notwithstanding any other provision of law, in any
39 criminal prosecution in which an enhancement is alleged
40 pursuant to Section 667 or 1170.12 of the Penal Code, the

1 parties shall be entitled to inspect, copy, and introduce
2 into evidence for the purpose of proving the alleged
3 enhancement, any juvenile records of the person named
4 in the criminal complaint or information, whether or not
5 those records have been sealed, where the person was
6 found to have committed, when they were—~~16~~ 14 years of
7 age or older, an offense set forth in subdivision (b) of
8 Section 707. Except as provided herein, these records
9 shall be confidential and available for inspection and
10 copying only by the court, the jury, as authorized by the
11 court, parties, counsel for the parties, and any other
12 person authorized by the court. In the case of an acquittal
13 or if the enhancement allegations under Section 667 or
14 1170.12 of the Penal Code are stricken, the court shall
15 order the records resealed.

16 SEC. 3. Section 827.1 of the Welfare and Institutions
17 Code, as added by Section 1 of Chapter 422 of the Statutes
18 of 1996, is amended and renumbered to read:

19 ~~827.1.~~

20 827.2. (a) Notwithstanding Section 827 or any other
21 provision of law, written notice that a minor has been
22 found by a court of competent jurisdiction to have
23 committed any felony pursuant to Section 602 shall be
24 provided by the court within seven days to the sheriff of
25 the county in which the offense was committed and to the
26 sheriff of the county in which the minor resides. Written
27 notice shall include only that information regarding the
28 felony offense found to have been committed by the
29 minor and the disposition of the minor's case. If at any
30 time thereafter the court modifies the disposition of the
31 minor's case, it shall also notify the sheriff as provided
32 above. The sheriff may disseminate the information to
33 other law enforcement personnel upon request, provided
34 that he or she reasonably believes that the release of this
35 information is generally relevant to the prevention or
36 control of juvenile crime.

37 (b) Any information received pursuant to this section
38 shall be received in confidence for the limited law
39 enforcement purpose for which it was provided and shall
40 not be further disseminated except as provided in this

1 section. An intentional violation of the confidentiality
2 provisions of this section is a misdemeanor punishable by
3 a fine not to exceed five hundred dollars (\$500).

4 *(c) Notwithstanding subdivision (a) or (b), a law*
5 *enforcement agency may disclose to the public or to any*
6 *interested person the information received pursuant to*
7 *subdivision (a) regarding a minor 14 years of age or older*
8 *who was found by the court to have committed any felony*
9 *enumerated in subdivision (b) of Section 707. The law*
10 *enforcement agency shall not release this information if*
11 *the court for good cause, with a written statement of*
12 *reasons, so orders.*

13 SEC. 4. Section 827.5 of the Welfare and Institutions
14 Code is amended to read:

15 827.5. Notwithstanding any other provision of law
16 except Sections 389 and 781 of this code and Section
17 1203.45 of the Penal Code, a law enforcement agency may
18 disclose the name of any minor 14 years of age or older
19 taken into custody for the commission of any serious
20 felony, as defined in subdivision (c) of Section 1192.7 of
21 the Penal Code, ~~and the offenses allegedly committed;~~
22 upon the request of *any* interested persons, ~~if a hearing~~
23 ~~has commenced that is based upon a petition that alleges~~
24 ~~that the minor is a person within the description of~~
25 ~~Section 602.~~

26 SEC. 5. Section 827.6 of the Welfare and Institutions
27 Code is repealed.

28 ~~827.6. (a) Notwithstanding any other provision of~~
29 ~~law, the presiding judge of the juvenile court may~~
30 ~~authorize a law enforcement agency to disclose only the~~
31 ~~name and other information necessary to identify a minor~~
32 ~~who is lawfully sought for arrest as a suspect in the~~
33 ~~commission of any felony listed in subdivision (b) of~~
34 ~~Section 707 where the disclosure is imperative for the~~
35 ~~apprehension of the minor. The court order shall be solely~~
36 ~~for the limited purpose of enabling law enforcement to~~
37 ~~apprehend the minor, and shall contain the exact nature~~
38 ~~of the data to be released. In determining whether to~~
39 ~~authorize the release of information pursuant to this~~
40 ~~section, the court shall balance the confidentiality~~

~~interests of the minor under this chapter, the due diligence of law enforcement to apprehend the minor prior to the filing of a petition for disclosure, and the public safety interests raised by the facts of the minor's case.~~

~~(b) When seeking an order of disclosure pursuant to this section, in addition to any other information requested by the presiding judge, a law enforcement agency shall submit to the court a verified declaration and any supporting exhibits indicating the probable cause for the lawful arrest of the minor, efforts to locate the minor, including, but not limited to, persons contacted, surveillance activity, search efforts, any other pertinent information, all evidence regarding why the order is critical, including a minor's danger to himself or herself, the minor's danger to others, the minor's flight risk, and any other information indicating the urgency for a court order.~~

SEC. 6. Section 827.6 is added to the Welfare and Institutions Code, to read:

827.6. A law enforcement agency may release the name, description, and the alleged offense of any minor alleged to have committed a violent offense, as defined in subdivision (c) of Section 667.5 of the Penal Code, and against whom an arrest warrant is outstanding, if the release of this information would assist in the apprehension of the minor or the protection of public safety. Neither the agency nor the city, county, or city and county in which the agency is located shall be liable for civil damages resulting from release of this information.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million

1 dollars (\$1,000,000), reimbursement shall be made from
2 the State Mandates Claims Fund.

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